



COUNTY OF LOS ANGELES

Department of Agricultural Commissioner/ Weights and Measures


Kurt E. Floren
*Agricultural Commissioner/
Director of Weights and Measures*

*12300 Lower Azusa Road
Arcadia, California 91006-5872
<http://acwm.co.la.ca.us>*

Robert G. Atkins
Chief Deputy

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To: Mayor Michael D. Antonovich, Supervisor, Fifth District
Supervisor Gloria Molina, First District
Supervisor Yvonne B. Burke, Second District
Supervisor Zev Yaroslavsky, Third District
Supervisor Don Knabe, Fourth District

From: Kurt E. Floren 
Agricultural Commissioner/
Director of Weights and Measures

AB 889: A SIX MONTH UPDATE ON THE LEGISLATION'S EFFECTS UPON WEIGHTS AND MEASURES ENFORCEMENT IN LOS ANGELES COUNTY

Background

Assembly Bill 889 (Ruskin) was chaptered into State law in October 2005, amending Section 12240 of the Business and Professions Code (BPC). The bill's provisions affected fees charged to operators of commercially-used weighing and measuring devices, raising the maximum registration fee amounts that county boards of supervisors may require operators to pay for most weighing and measuring devices. The fee structure was revised to permit Counties to charge a location fee for each business operating a device as well as a per-device fee for devices in use at each of the locations. As was the case prior to AB 889, revenues raised by these fees must be utilized to fund the inspection and testing of these devices and may be used to fund the testing of the net contents of packaged goods to ensure they conform to label representations.

AB 889 also added language specifying the method by which inspectors in specific counties must test price accuracy in retail stores. Counties that have established, or subsequently enact, ordinances addressing registration of electronic point-of-sale systems (i.e., "scanners") are required to conduct most price verification inspections using methods that employ random selection of stock items to be tested. Los Angeles County, a jurisdiction with such an ordinance, is affected by these new statutory provisions.

At the meeting of November 28, 2005, your Board adopted County Ordinance 05-3023, which established a new device registration fee schedule with location fees and per-device fees set at the maximum rates authorized by BPC Section 12240. Most operators of commercial weighing and measuring devices experienced an increase in fees payable to the Department of Agricultural Commissioner/Weights and Measures (ACWM) for device registration.

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ACWM works annually, each mid-December, with the Treasurer and Tax Collector to distribute device registration billing statements to over 22,000 locations. With the late-October 2005 chaptering of AB 889, ACWM worked quickly to inform and meet with industry representatives regarding the terms of the bill, our intention to propose implementation of the maximum fees, and to provide explanation and justification for the fee increases. As a result, your Board was able to consider the ordinance with no introductions of opposition from the affected industries and adopted the ordinance on November 28, 2005. Despite the short time interval, billing statements were sent on December 15, 2005, implementing the revised fees for 2006. This initial billing represented over \$2.9 million in anticipated fees, a \$1.4 million increase over 2005. Revenue received from Device Registrations in the first six months of 2006 totaled \$2,597,720 comparing to \$1,326,600 for the comparable period in 2005.

Effects Upon Device Inspections:

ACWM pursued adoption of the revised registration fees to enhance our Weights and Measures program, achieve annual inspection frequency, and provide added protections in the marketplace. All is underway. The Devices Division of ACWM's Weights and Measures Bureau is responsible for inspecting over 200,000 weighing and measuring devices in Los Angeles County. At the close of 2005, the Division employed 20 full-time inspectors to conduct field inspections and tests in the Bureau laboratory. On March 21, 2006, ACWM received budget authorization to fill an additional 12 field inspector positions, 2 supervising inspector positions, and one Deputy Sealer position. Presently, the Division has 24 device inspectors. Since the start of the year, ACWM recruitment efforts have resulted, unfortunately, in a limited pool of candidates as other county weights and measures jurisdictions are similarly seeking to hire additional staff.

To meet the intended goal of increased device testing frequency while continuing our recruitment and hiring efforts, ACWM has utilized a portion of the additional registration fee revenue to fund overtime work in field inspections during the first half of 2006. As a result, device inspections have increased 34% over the same six month period in 2005 (Please see Appendix A).

From January to June 2006, seven newly hired inspectors were brought into the Device Division with an additional transference of one employee from another ACWM division. 3 resignations and 1 employee transfer due to a promotion resulted in the to-date net gain of only 4 positions and the current 24 position staffing level. As noted in Appendix A, these new hires contributed substantial additional hours to total hours expended. However, as each was assigned to another inspector for training purposes, they contributed minimally to the increase in inspections conducted during these months, hence the disproportion between hour increases (54%) and device inspection increases (34%). Significant gains in inspection production will be observed as new inspectors are released, after comprehensive training, to conduct independent inspections.

The goal of ACWM is to inspect each commercial device at least as frequently as every twelve months by 2008 (excepting utility - electric, natural gas, and water - submeters, which have ten year inspection intervals designated in State regulation). ACWM has already made substantial progress in moving toward the twelve month frequency of inspections, which is demonstrated through evaluation of retail gasoline meter inspection data (see page 3):

**Retail Gasoline Meters Inspected by Type of Inspection
For January - June 2006**

Population	Routine	New Installation	Reinspection	Complaints
54,400	20,806	689	1,920	1810

A summing of routine inspections and inspections of new installations (21,495) demonstrates that 40% of the total gasoline meter population (54,400) has already been inspected during the first six months of 2006. Projecting over the course of the full year, ACWM anticipates completing inspections of at least 80% of the retail gasoline meter population this year, with a greater level achievable through the work of fully-trained new hires once working independently. This is a substantial increase over the 63% inspected during 2004 and 53% in 2005.

Location and device fees are scheduled to increase in 2007 and, again, in 2008 to the cap levels. As new employees are hired, trained, and equipped, the Department fully anticipates that it will achieve its annual device inspection goal.

Effects Upon Retail Store “Scanner” Inspections:

AB 889 added Sections 13350 - 13357 to the Business and Professions Code. The new statutory provisions affect inspection procedural issues as well as establishing a new fee authority.

Section 13350 requires that specific methodologies be used by counties with scanner ordinances when conducting price accuracy tests in retail stores. Los Angeles County enacted its scanner registration ordinance in February 2002 and, as noted, is subject to the new law.

Three item selection methodologies are prescribed by the new requirements:

- “Initial standard” inspections are routine annual inspections of retailers. Such must be conducted using a detailed item selection procedure modeled after that set forth in the National Institute of Standards and Technology (NIST) Handbook 130, requiring selection of items randomly, with no bias towards any store area or merchandise type.
- “Stratified” random selection process is permitted for stores in which items are marked as “sale” or “reduced price” or any similar wording. At such locations, up to 50% of the selected items may be “sale” items with all others non-sale or “regular” priced items. Items selected from each subgroup must still be selected at random.
- “Special” inspections are permitted by BPC §13356. Such inspections do not require that items be randomly selected or that there be a minimum sample size. Instances in which special inspections are used include responses to complaints, re-inspections of stores at which a previous inspection resulted in at least one overcharge, and investigations.

Section 13350 prescribes a minimum number of stock items that an inspector must examine when conducting a routine inspection. For stores equipped with three or fewer “scanners” at checkout counters, a minimum sample size of 25 is required. Stores having four or more scanners must be tested via a 50-item sampling. This represents a 20% to 40% increase over the sample sizes of 5-15 examined by ACWM Price Verification Inspectors prior to AB 889.

The new law provides authority for county boards of supervisors to establish a fee that may be charged to a retailer to recover costs of a reinspection following a failed inspection. The re-inspection must be conducted within three months of the finding of overcharges exceeding 2% of items tested (i.e., less than a 98% compliance rate, by count). Your Board implemented an ordinance provision authorizing such a fee, currently at a rate of \$68.75 per hour. During the first six months of 2006, ACWM billed 69 retail stores for re-inspections conducted by staff.

The effects of increased sample sizes and randomization were predictable, as it is more time intensive to conduct routine inspections according to the new requirements. Time to conduct a single routine inspection has, on average, increased by nearly one hour. Also, inspectors are identifying fewer overcharges, as previous inspection methodology tended to focus on known problem areas within retail stores, such as “sale” items, percentage discounts taken at registers, “Buy 2 - Get the 3rd half-off,” and similar promotions tending to introduce errors. Overcharges are discovered at an average rate of one per 5.4 inspections as opposed to one per 2.6 inspections prior to implementing the AB 889 methodology (See Appendix B). Retailers had expressed concerns that any focus on a subcategory of stock items or sales practice (i.e., promotional items) provided statistics not representative of the overall accuracy of a store’s entire stock.

ACWM remains concerned over the legislation’s effects on regulatory program effectiveness in ensuring price accuracy. Many years of inspection data document that a majority of overcharges occur on items which have been subject to price changes, typically “sale” or promotional items, hence the pre-existing sampling practice. ACWM believes that the scanner inspection methodology mandated by AB 889 results in time consuming inspections that do not mirror typical buying patterns of consumers attracted by successful and popular promotional marketing practices and who often buy multiple items to secure additional savings which, too frequently, are not granted at the checkstand. ACWM’s goal to inspect each store annually is frustrated, too, due to over 30% increase in routine inspection time expenditures.

A sunset date of January 1, 2009, was established regarding BPC Sections 13350 through 13357. ACWM staff will continue to track inspection data and document all effects of the statutory requirements upon this important enforcement program dedicated to ensuring price accuracy for consumers and the protection of fair competition. We will continue to report findings to your Board for consideration in assessing the effectiveness of the Price Verification Program under the revised statutory design.

KEF:RGA:JNH:jh

c. David Jansen - CAO

APPENDIX A

Comparison of Device Inspections Before and After AB 889 Passage

	Jan-June 2005	Jan-June 2006	% Change
METERS:			
Retail Meters (Gas Pumps)	16,787	25,225	+50%
Taximeters	745	973	+31%
Watt Hour Meters	1,191	1,922	+61%
Gas Vapor Meters	1,524	1,688	+11%
Water Meters	4,410	4,804	+9%
Medium Flow Meters (Truck Stops)	535	977	+83%
Vehicle Meters	0	54	N/A
Others	1478	1491	+1%
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Subtotal	26,670	37,134	+39%
 SCALES:			
General Scales	6,162	6,356	+3%
Heavy Capacity	442	962	+117%
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Subtotal	6,604	7,318	+11%
 TOTAL DEVICES INSPECTED:	 33274	 44452	 +34%
 DEVICE INSPECTOR HOURS:	 15,291	 23,574	 +54%

APPENDIX B
Comparison of Price Verification Inspections of Retail Stores
Before and After AB 889 Passage

	January-June 2005	January-June 2006	% Change
# Stores: "Routine" Inspections:	2,688	2,089	-22%
# Stores: "Special" Inspections:*	139	432	+210%
Total Inspection Hours:	6,425	7,593	+18%
Avg Hours per "Routine" Inspection:	2.29	3.12	+36%
Avg Hours per "Special" Inspection:	1.85	2.50	+35%
# Items Tested:	29,062	73,556	+153%
Items Undercharged:	15	38	+153%
% Items Undercharged:	0.05%	0.05%	0.0 %
# Items Overcharged:	1,083	462	-57%
% Items Overcharged:	3.37%	0.63%	-81%
Total Overcharge Value: (Actual - Not extrapolated over all stocked items)	\$3,231	\$1,346	-58%
% Overcharge of Total Purchase/Sample:	0.69%	0.09%	-86%
Ratio of Overcharges/Undercharges:	72.2/1	12.16/1	-83%
Avg # Inspections Conducted Per Documented Overcharge:	2.6	5.4	+107%
Criminal Complaints:†	405	104	-74%
Civil Admin Penalty Actions:†	128	95	-26%

* Represents inspections generated by consumer and business complaints filed with ACWM in 2005. In 2006, this represents complaint inspections and investigative inspections performed cooperatively with other jurisdictions, as per AB 889 provisions.

† The Department amended prosecution policies regarding cases involving single overcharges of more than one dollar. Formerly, these had typically been filed with the criminal courts. Beginning March 2006, these cases are being addressed through the Civil Administrative Penalty Process.